

AN ACT

relating to regulation of the commercial oyster industry in this state; increasing criminal penalties; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 76, Parks and Wildlife Code, is amended by adding Section 76.0205 to read as follows:

Sec. 76.0205. SUSTAINABILITY OF OYSTER INDUSTRY. (a) In order to enhance the viability of commercial oyster fishing and ensure the sustainability of the oyster industry to accommodate the highest number of commercial oyster fishing boats, a person who purchases oysters under Section 47.0091 and holds a shellfish certificate, as defined by Section 436.002, Health and Safety Code, must:

(1) distribute, in an area designated by the department, oyster shells or other cultch material approved by the department in an amount equal to not less than 30 percent of the total volume of oysters purchased by the person in the previous license year; or

(2) pay a fee to the department in an amount calculated under Subsection (c).

(b) The distribution of oyster shells or other cultch material must be directly supervised by an agent or employee of the department.

(c) The department shall calculate the current market cost

1 of the acquisition and deposition of cultch material on a per cubic
2 yard basis. The fee charged under Subsection (a)(2) is the market
3 cost established under this subsection multiplied by 30 percent of
4 the total volume of oysters purchased by the person in the previous
5 license year. The fee charged under this section shall be deposited
6 to the credit of the oyster shell recovery and replacement program
7 account.

8 (d) A person who possesses oysters that do not meet the
9 requirements of Section 76.112:

10 (1) shall replace the oysters in the beds from which
11 they were taken as directed by an authorized employee of the
12 department; and

13 (2) is subject to any penalty and must perform any
14 remedy authorized by law.

15 SECTION 2. Sections 76.101(b) and (d), Parks and Wildlife
16 Code, are amended to read as follows:

17 (b) No [~~Except as provided in Subsection (d) of this~~
18 ~~section, no~~] person may take or attempt to take oysters from the
19 public water of this state, without the use of a boat, for pay or for
20 the purpose of sale, barter, or exchange or any other commercial
21 purpose without first having acquired from the department a
22 commercial oyster fisherman's license.

23 (d) Each member of the [~~The captain and~~] crew of a licensed
24 commercial oyster boat is [~~are not~~] required to have a general
25 commercial [~~oyster~~] fisherman's license [~~licenses~~] to take oysters
26 while they are on a licensed boat that is being used to take
27 oysters.

1 SECTION 3. Section 76.118, Parks and Wildlife Code, is
2 amended by amending Subsection (a) and adding Subsections (e-2),
3 (e-3), (e-4), and (e-5) to read as follows:

4 (a) Except as provided in Subsections (b), ~~[and] (c), (e-2),~~
5 and (e-3) [of this section], a person who violates a provision of
6 this subchapter or a regulation of the commission issued under this
7 subchapter commits an offense that is a Class C Parks and Wildlife
8 Code misdemeanor.

9 (e-2) The punishment for an offense otherwise punishable
10 under Subsection (a) is a Class B Parks and Wildlife misdemeanor if
11 it is shown on the trial of the offense that:

12 (1) the defendant is the captain of a commercial
13 oyster boat or a member of the crew of a commercial oyster boat;

14 (2) the provision or regulation violated relates to
15 oyster size; and

16 (3) the defendant has previously been convicted at
17 least twice for a violation of a provision or regulation relating to
18 oyster size.

19 (e-3) The punishment for an offense otherwise punishable
20 under Subsection (a) is a Class C Parks and Wildlife misdemeanor,
21 with an attendant license suspension under Section 76.1181, if it
22 is shown on the trial of the offense that:

23 (1) the defendant is the captain of a commercial
24 oyster boat or a member of the crew of a commercial oyster boat;

25 (2) the provision or regulation violated relates to
26 oyster size and the defendant was in possession of a cargo of
27 oysters in which 30 percent or more of the oysters measured less

1 than three inches in length along an imaginary straight line
2 through the long axis of the shell; and

3 (3) the defendant has previously been convicted one
4 time for a violation of a provision or regulation relating to oyster
5 size and the defendant was in possession of a cargo of oysters in
6 which 30 percent or more of the oysters measured less than three
7 inches in length along an imaginary straight line through the long
8 axis of the shell.

9 (e-4) The punishment for an offense otherwise punishable
10 under Subsection (a) is a Class B Parks and Wildlife misdemeanor,
11 with an attendant license suspension under Section 76.1181, if it
12 is shown on the trial of the offense that:

13 (1) the defendant is the captain of a commercial
14 oyster boat or a member of the crew of a commercial oyster boat;

15 (2) the provision or regulation violated relates to
16 oyster size and the defendant was in possession of a cargo of
17 oysters in which 30 percent or more of the oysters measured less
18 than three inches in length along an imaginary straight line
19 through the long axis of the shell; and

20 (3) the defendant has previously been convicted at
21 least two times for a violation of a provision or regulation
22 relating to oyster size and the defendant during both offenses was
23 in possession of a cargo of oysters in which 30 percent or more of
24 the oysters measured less than three inches in length along an
25 imaginary straight line through the long axis of the shell.

26 (e-5) It is a defense to prosecution under Subsection (a)
27 for a violation of a statute or regulation adopted relating to

1 oyster size that the defendant is a person who purchased oysters
2 from the captain or a member of the crew of a commercial oyster boat
3 and the purchaser was in possession of a cargo of oysters in which
4 less than 30 percent of the oysters were less than three inches in
5 length along an imaginary straight line through the long axis of the
6 shell.

7 SECTION 4. Subchapter C, Chapter 76, Parks and Wildlife
8 Code, is amended by adding Section 76.1181 to read as follows:

9 Sec. 76.1181. SUSPENSION OF LICENSE. (a) For purposes of
10 this section, "final conviction" includes a plea of guilty or nolo
11 contendere to or the imposition of deferred adjudication for an
12 offense.

13 (b) On final conviction for an offense punishable under
14 Section 76.118(e-3) or (e-4), the commercial oyster boat license of
15 the boat used in the commission of the violation is suspended for 30
16 days.

17 (c) On final conviction for an offense punishable under
18 Section 76.118(e-3) or (e-4), the commercial oyster boat captain's
19 license of the captain of the boat used in the commission of the
20 violation is suspended for 30 days. During the period of
21 suspension, the holder of the suspended license may not purchase a
22 general commercial fisherman's license or a commercial oyster
23 fisherman's license.

24 (d) On final conviction for an offense punishable under
25 Section 76.118(e-3) or (e-4), the general commercial fisherman's
26 license of a member of the crew of a boat on which the violation was
27 committed is suspended for 30 days. During the suspension period,

1 the holder of the suspended license may not purchase a commercial
2 oyster boat captain's license or a commercial oyster fisherman's
3 license.

4 (d-1) On final conviction for an offense punishable under
5 Section 76.118(e-3) or (e-4), the commercial oyster fisherman's
6 license of the person who takes or attempts to take oysters without
7 the use of a boat is suspended for 30 days.

8 (e) On final conviction for the third offense within five
9 years of the commission of an offense punishable under Section
10 76.118, for a violation of a provision or regulation relating to
11 oyster size in which the conviction was for possession of a cargo of
12 oysters in which 30 percent or more of the oysters measured less
13 than three inches in length along an imaginary straight line
14 through the long axis of the shell, any license issued by the
15 department to a person that purchases oysters is suspended for 30
16 days. During the suspension period, the holder of the suspended
17 license may not purchase a license issued by the department
18 allowing the taking or purchase of oysters.

19 (f) A suspension period described by this section must be
20 served during the public oyster season in which the violation
21 occurred, unless less than 30 days remain in the public oyster
22 season, in which case the suspension must be served at the beginning
23 of the next public oyster season.

24 SECTION 5. Section 76.119, Parks and Wildlife Code, is
25 amended by amending Subsection (a) and adding Subsections (c) and
26 (d) to read as follows:

27 (a) If a vessel licensed as a commercial oyster boat is

1 involved in a violation of this chapter, the captain of the vessel
2 licensed as a commercial oyster boat is primarily responsible for
3 the violation. A member of the crew of a vessel licensed as a
4 commercial oyster boat is not guilty of a violation unless the
5 member of the crew committed the violation against the captain's
6 orders, except for a violation of Section [76.109](#), [76.112](#), or
7 [76.116](#), in which case each person on the vessel is responsible for
8 the violation.

9 (c) The captain of a vessel licensed as a commercial oyster
10 boat shall identify the name of the captain, the vessel, and each
11 member of the crew to each purchaser of oysters.

12 (d) A person who purchases oysters under Section [47.0091](#),
13 who holds a shellfish certificate as defined by Section [436.002](#),
14 Health and Safety Code, and who purchases oysters from a captain of
15 a vessel licensed as a commercial oyster boat, the holder of a
16 commercial oyster boat license, or a member of the crew of a
17 commercial oyster boat in violation of Section [76.109](#) or [76.112](#) or
18 this section may not possess the oysters and is subject to any
19 penalty prescribed by law.

20 SECTION 6. Section [76.301](#), Parks and Wildlife Code, is
21 amended by amending Subsections (c) and (f) and adding Subsection
22 (h) to read as follows:

23 (c) A proclamation issued under Subsection (a) of this
24 section may limit the quantity and size of oysters that may be
25 taken, possessed, sold, or purchased and may prescribe the times,
26 places, conditions, and means and manner of taking oysters.
27 [~~However, measures dealing with sale and purchase may only be~~

1 ~~implemented at first sale or exchange transaction.]~~

2 (f) A person who violates a proclamation issued under
3 ~~[Subsection (a) of]~~ this subchapter ~~[section]~~ commits an offense
4 that is a Parks and Wildlife Code Class C misdemeanor. ~~[An offense~~
5 ~~under this section is punishable by a fine of not less than \$25 nor~~
6 ~~more than \$200.]~~

7 (h) A proclamation of the commission under this section
8 applies to any person who:

9 (1) purchases oysters from the captain of a commercial
10 oyster boat, the holder of a commercial oyster boat license, or a
11 member of the crew of a commercial oyster boat;

12 (2) purchases oysters under Section 47.0091; and

13 (3) holds a shellfish certificate, as defined by
14 Section 436.002, Health and Safety Code.

15 SECTION 7. Subchapter E, Chapter 76, Parks and Wildlife
16 Code, is amended by adding Section 76.304 to read as follows:

17 Sec. 76.304. VESSEL MONITORING SYSTEM. (a) The commission
18 by proclamation may establish a vessel monitoring system for
19 commercial oyster boats.

20 (b) Before the commission issues a proclamation under
21 Subsection (a), the department shall consult with commercial oyster
22 boat license holders concerning establishment of a vessel
23 monitoring system.

24 SECTION 8. Subchapter F, Chapter 76, Parks and Wildlife
25 Code, is amended by adding Sections 76.405, 76.406, and 76.407 to
26 read as follows:

27 Sec. 76.405. LICENSE BUYBACK PROGRAM. (a) The department

1 shall implement a license buyback program for licenses issued under
2 this subchapter as part of the oyster license moratorium program
3 established by this subchapter.

4 (b) The commission by rule shall establish criteria, using
5 reasonable classifications, for the department's use in selecting
6 licenses to be purchased. The department or executive director
7 shall consult with the oyster license moratorium review board
8 concerning establishment of the criteria.

9 (c) The department shall retire each license purchased
10 under the license buyback program until the commission finds that
11 management of the oyster fishery allows reissue of those licenses
12 through auction or lottery.

13 (d) The department shall set aside an amount determined by
14 commission rule that is at least 20 percent of the fees from
15 licenses issued under this subchapter to be used only for the
16 purpose of buying back commercial oyster boat licenses from willing
17 license holders. That money shall be sent to the comptroller for
18 deposit to the credit of the game, fish, and water safety account.

19 (e) The department may solicit and accept grants and
20 donations of money or materials from private or public sources for
21 the purpose of buying back licenses issued under this subchapter
22 from willing license holders.

23 (f) Money to be used for the purpose of buying back licenses
24 issued under this subchapter is not subject to Section [403.095](#),
25 Government Code.

26 (g) The commission shall consider the social and economic
27 viability of the oyster industry and input from the oyster license

1 moratorium review board regarding the reissue of commercial oyster
2 boat licenses through auction or lottery.

3 Sec. 76.406. PREVAILING AUTHORITY. A proclamation of the
4 commission under this subchapter prevails over any conflicting
5 provision of this chapter to the extent of the conflict.

6 Sec. 76.407. REPORT TO LEGISLATURE. (a) Not later than
7 November 1, 2020, the department shall report to the governor and
8 each member of the legislature an overview of the administration
9 and status of the oyster license buyback program, including the
10 biological, sociological, and economic effects of the program.

11 (b) This section expires September 1, 2021.

12 SECTION 9. The Parks and Wildlife Commission shall adopt
13 any rules required to implement Sections 76.405, 76.406, and
14 76.407, Parks and Wildlife Code, as added by this Act, not later
15 than June 1, 2018.

16 SECTION 10. (a) Except as provided by Subsection (b) of
17 this section, this Act takes effect September 1, 2017.

18 (b) Sections 76.405, 76.406, and 76.407, Parks and Wildlife
19 Code, as added by this Act, take effect June 1, 2018.

President of the Senate

Speaker of the House

I certify that H.B. No. 51 was passed by the House on April 26, 2017, by the following vote: Yeas 131, Nays 17, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 51 on May 24, 2017, by the following vote: Yeas 119, Nays 25, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 51 was passed by the Senate, with amendments, on May 21, 2017, by the following vote: Yeas 21, Nays 10.

Secretary of the Senate

APPROVED: _____

Date

Governor